

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION**

RAMON ARMAS BORROTO, JR.,

Plaintiff,

-vs-

CASE NO. 5:04-CV-165-RH.WCS

**L. MCDONALD, PATE, MCKENZIE
and KENT,**

Defendants.

**MOTION FOR LEAVE TO FILE DEFENDANTS'
WITNESS AND EXHIBIT LIST OUT OF TIME**

Defendants, McDonald, Pate, McKenzie, and Kent, through undersigned counsel, hereby move for leave to file their trial witness and exhibit list out of time. Defendants allege the following:

1. In its Order for Pretrial Conference (Document #96) this Court directed the Clerk to set the case for pretrial conference on or after April 16, 2007, and ordered the parties to file their trial witness and exhibit lists at least two (2) weeks prior thereto.
2. Subsequently, on March 14, 2007, the Clerk issued a notice of pretrial conference, setting same for April 24, 2007 (Document #97).
3. On March 20, 2007, the undersigned filed their notice of appearance and substitution of counsel, as counsel for Defendants herein.
4. Below listed counsel immediately reviewed the docket sheets of their case files and noted the pretrial conference set for April 24, 2007.

5. Counsel also began reviewing the pleadings themselves and, only upon review of their case files did they note the prior order requiring submission of the witness and exhibit list, which time had already passed.

6. Counsel have now completed their review of the case files and accompanying documents pertaining thereto, and are contemporaneously herewith submitting the required trial witness and exhibit list.

7. Plaintiff has already received all of the listed exhibits as attachments to previous filings herein.

8. Accordingly, Plaintiff should not be prejudiced by the one week delay in Defendants listing of same.

9. Therefore, Defendants move for leave of court to file their trial witness and exhibit list out of time.

MEMORANDUM OF LAW

Pursuant to Rule 6(b), Fed.R.Civ.P., this Court has the discretion to enlarge the time period for the doing of an act required by order of court, upon a showing of excusable neglect. Defendants respectfully submit that they have demonstrated excusable neglect in their motion herein, for their failure to timely comply with this Court's pretrial order. Accordingly,

Defendants request that their motion be granted, and that their trial witness and exhibit list be accepted as if timely filed.

Respectfully submitted,

BILL McCOLLUM
ATTORNEY GENERAL

/s/ Joe Belitzky

JOE BELITZKY
Senior Assistant Attorney General
Florida Bar No. 0217301

/s/ Shelly L. Marks

SHELLY L. MARKS
Assistant Attorney General
Florida Bar No. 0676063

Office of the Attorney General
The Capitol, PL-01
Tallahassee, Florida 32399-1050
Telephone: (850) 414-3300

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail to Ramon Borroto, Jr., #X27467, Florida State Prison, 7819 N.W. 228th Street, Raiford, Florida 32026-1000, on this 16 day of April 2007.

/s/ Joe Belitzky

Attorney